

SENATE BILL 3098

By Cohen

AN ACT to amend Tennessee Code Annotated, Title 13,  
Chapter 21, Part 1 and Title 29, Chapter 1, Part 1,  
relative to structures unfit for occupation or use.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 13-21-101, is amended by deleting subdivision (3) in its entirety and by substituting instead the following language:

(3) "Municipality" means any county, including any county having a metropolitan form of government, or incorporated city or town in this state;

SECTION 2. Tennessee Code Annotated, Section 13-21-101, is further amended by adding the following language as a new, appropriately designated subdivision:

(\_) "Receiver" means a government agency or a non-profit housing organization qualified to do business in the state of Tennessee;

SECTION 3. Tennessee Code Annotated, Section 13-21-102, is amended by deleting the language "there exists in such municipality structures" and by substituting instead the language "there exists in such municipality vacant structures".

SECTION 4. Tennessee Code Annotated, Title 13, Chapter 21, Part 1, is amended by deleting §13-21-103 in its entirety and by substituting instead the following language:

Section 13-21-103. Upon the adoption of an ordinance finding that conditions of the character described in §13-21-102 exist within a municipality, the governing body of the municipality is hereby authorized to adopt ordinances relating to the structures within the municipality which are unfit for human occupation or use. Such ordinances shall include the following provisions, that:

(1) A public officer or the judge of any court designated as an environmental court pursuant to Chapter 426 of the Public Acts of 1991 be designated or appointed to exercise the powers prescribed by the ordinances;

(2) As designated in the ordinance, a petition may be filed with the public officer or the environmental court by a public authority, the attorney general, any district attorney general, any city or county attorney, or at least five (5) residents of the municipality charging that any structure is unfit for human occupation or use;

(3)

(A) In cases where the petition has been filed with the environmental court, the judge shall refer the petition to the public officer for review. If the public officer's preliminary investigation discloses a basis for such charges, he shall submit said preliminary finding to the court within thirty (30) days. The petitioner shall issue and cause to be served upon the owner of and parties in interest of such structure a complaint stating the charges in that respect and containing a notice setting a hearing date. Pursuant to Rule 65 of the Tennessee Rules of Civil Procedure and at least fifteen (15) days prior to the date of the hearing, the petitioner shall file with the court a certificate of service verifying compliance with this requirement;

(B) In cases where the public officer has been designated by the ordinance, the public officer shall, if the public officer's preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and parties in interest of such structure, a complaint stating the charges in that respect and containing a notice that

a hearing will be held before the public officer (or the public officer's designated agent) at a place therein fixed, not less than ten (10) days nor more than thirty (30) days after the serving of the complaint, that:

(i) The owner and parties in interest shall be given the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and

(iii) The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer;

(4) If, after such notice and hearing, the public officer or judge determines that the structure under consideration is unfit for human occupation or use, the public officer or judge shall state in writing the findings of fact in support of such determination and shall issue and cause to be served upon the owner thereof an order:

(A) If the repair, alteration or improvement of the structure can be made at a reasonable cost in relation to the value of the structure (the ordinance of the municipality may fix a certain percentage of such cost as being reasonable for such purpose), requiring the owner, within the time specified in the order, to repair, alter or improve such structure to render it fit for human occupation or use or to vacate and close the structure as a place of human occupation or use; or

(B) If the repair, alteration or improvement of the structure cannot be made at a reasonable cost in relation to the value of the structure (the ordinance of the municipality may fix a certain percentage of such cost as

being reasonable for such purpose), requiring the owner, within the time specified in the order, to remove or demolish such structure;

(5) If the owner fails to comply with an order to repair, alter or improve, or to vacate and close the structure, the public officer or judge may cause such structure to be repaired, altered or improved including, but not limited to, through appointment of a receiver, or to be vacated and closed; that the public officer or judge may cause to be posted on the main entrance of any structure so closed, a placard with the following words: "This building is unfit for human occupation or use. The use or occupation of this building for human occupation or use is prohibited and unlawful." Any appointment of a receiver shall be by order of a court with jurisdiction over enforcement of the ordinance authorized herein;

(6) If the owner fails to comply with an order to remove or demolish the structure, the public officer or judge may cause such structure to be removed or demolished;

(7) The amount of the cost of such repairs, alterations or improvements, or vacating and closing, or removal or demolition by the public officer, judge or receiver, as well as reasonable fees for registration, inspections and professional evaluations of the property, shall be assessed against the owner of the property, and shall, upon the certification of the sum owed being presented to the municipal tax collector, be a lien on the property in favor of the municipality, second only to liens of the state, county and municipality for taxes, any lien of the municipality for special assessments, and any valid lien, right or interest in such property duly recorded or duly perfected by filing, prior to the filing of such notice. These costs shall be collected by the municipal tax collector or county trustee at the same time and in the same manner as property taxes are collected. If the

owner fails to pay the costs, they may be collected at the same time and in the same manner as delinquent property taxes are collected and shall be subject to the same penalty and interest as delinquent property taxes as set forth in §§67-5-2010 and 67-5-2410. In addition, the municipality may collect the costs assessed against the owner through an action for debt filed in any court of competent jurisdiction. The municipality may bring one (1) action for debt against more than one (1) or all of the owners of properties against whom the costs have been assessed, and the fact that multiple owners have been joined in one (1) action shall not be considered by the court as a misjoinder of parties. If the structure is removed or demolished by the public officer or at the direction of the court, the public officer shall sell the materials of such structure and shall credit the proceeds of such sale against the cost of the removal or demolition, and any balance remaining shall be deposited in the chancery court by the public officer, shall be secured in such manner as may be directed by such court, and shall be disbursed by such court to the person found to be entitled thereto by final order or decree of such court. Nothing in this section shall be construed to impair or limit in any way the power of the municipality to define and declare nuisances and to cause their removal or abatement, by summary proceedings or otherwise; and

(8)

(A) If, within six (6) months of the property being brought into compliance under the provisions of subdivision (4)(A), the property is found again to be unfit for human occupation or use by the judge of environmental court, the court may authorize a receiver to take possession and to assume the operation, improvement and maintenance,

or any combination thereof, of the property and other such relief as granted by the court;

(B) The receiver shall take prompt possession of the property and shall immediately be authorized to exercise all powers delegated by this act. The receiver shall have all the powers granted to a receiver in connection with the foreclosure of a mortgage on real property under the laws of the state of Tennessee, and all other powers and duties necessary or desirable, from time to time, for the efficient operation, management and the improvement of the property in order to bring it into compliance with all municipal building and housing code requirements and to fulfill the receiver's responsibilities under this act. The receiver may exercise all authority that an owner of any building would have including authority to operate, manage, improve, sell, or purchase the property; provided, however, that no transfer of title shall occur until the judge makes a written finding that the property owner had clear notice of the violation, a right to a hearing, and without good cause refuses to remedy the violation;

(C) If the provisions of subdivision (8)(B) are exercised so as to result in a transfer of title to the property, the court may authorize transfer of the property free and clear of liens, claims, and encumbrances. The transfer may be free of all or part of government tax liens with the permission of the governmental entities where the tax liens would be greater than the fair market value of the property. The transfer of the property shall not relieve the original owner of the property of any obligation for the payment of taxes or other governmental liens and

charges or mortgages or liens to any party before or after the declaration of a public nuisance by the court. The provisions of this subdivision shall only apply after the court has given proper notice and a hearing to the mortgage holder or lien holder and makes a written finding that the mortgage holder or lien holder has had the opportunity and ability to remedy the violation but refused to do so.

SECTION 5. Tennessee Code Annotated, Title 29, Chapter 1, Part 1, is amended by deleting §29-1-103 in its entirety and by substituting instead the following language:

Section 29-1-103.

(a) The courts are all vested with power to appoint receivers for the safekeeping, collection, management, and disposition of property in litigation in such court, whenever necessary to the ends of substantial justice, in like manner as receivers are appointed by courts of chancery.

(b) In matters where either the habitability, safety, and occupancy of the property are the basis for the litigation concerning such property, the courts shall have the authority to appoint a receiver to repair, alter, improve and manage, or any combination thereof, the property in question in order to ensure that such property is maintained in a safe, sanitary, and habitable manner.

SECTION 6. This act shall take effect July 1, 2006, the public welfare requiring it.